IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Crl.Rev.Pet.No. 3567 of 2007()

CRA.357/2003 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CC.242/1999 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHENGANNUR

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REVN. PETITIONER:

N.S. SEBASTIAN, S/O. SEBASTIAN,
PUTHANKADU NEDUMPURATHU, MOONNAR,
DEVIKULAM TALUK.

BY ADV. SRI.P.CHANDY JOSEPH

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

ADDL. R2 IMPLEADED

2. GOPINATHAN, S/O. VELAYUTHAN, KAMALAVILASAM, THITTAMON, CHENGANNUR P.O.,

(ADDL. R2 IMPLEADED AS PER ORDER ON CRL. M.A. NO. 3307/2007 DATED 23.08.2007.)

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR
SRI.K.SASIKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL. R.P. NO. 3567 OF 2007

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Dated this the 3rd day of October, 2007.

ORDER

The revision petitioner, who is the accused in C.C. No.242/1999 on the file of Judicial First Class Magistrate Court, Chengannur charged for an offence punishable under Section 420 of the Indian Penal Code, challenges the conviction entered and sentence passed against him by the courts below for the aforementioned offence.

2. The case of the prosecution as proved during the trial of the case is the following:

On 30.04.1998 at 9 a.m. the revision petitioner/accused approached the complainant and induced him to advance a loan of Rs.96,000/-. The accused gave Ext.P2 post-dated cheque to the complainant representing him that the cheque would be encashed on 07.05.1998. On 07.05.1998 the accused contacted the complainant over telephone and promised that the cheque would be encashed in the 1st week of October. Believing the words of the accused, the complainant presented the cheuqe before the drawee bank namely Chengannur branch of Lord Krishna Bank Ltd., on 08.10.98 hoping that the same would be encashed. But the cheque was returned unpaid for

the reason "Account Closed". By closing the account, the accused deliberately and with the dishonest intention of making unlawful gain, committed the aforesaid offence punishable under Section 420 IPC.

3. The learned Magistrate took cognizance of the offence on the basis of the police report. On the side of the prosecution, 7 witnesses were examined as PWs 1 to 7 and 10 documents were marked as Exts.P1 to P10.

4. After the close of the prosecution evidence, the revision petitioner/accused was examined under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 13.08.2003 found the revision petitioner guilty of the offences and sentenced him to undergo simple imprisonment for six months and to pay a fine of Rs.5000/- and on default to pay the fine, to suffer simple imprisonment for two months.

6. Aggrieved by the conviction entered and sentence passed by the trial court, the revision petitioner preferred an appeal before

Additional Sessions Court I, Mavelikkara as Crl. Appeal No. 357/2003. As per judgment dated 20.05.2005, the learned Additional Sessions Judge dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence this revision.

7. Even though the learned counsel for the revision petitioner assailed the conviction entered by the court below on various grounds, in as much as the conviction has been recorded after a careful evaluation of the oral and documentary evidence in the case, this Court sitting in revision will be loath to interfere with the conviction so recorded. The conviction is accordingly confirmed.

8. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. The courts below have been insensitive to the mandate of Section 357(3) Crl.P.C as per which the court has to give recompense to the victim of crime. The need to exercise the power under Section 357(3) Cr.P.C liberally was emphasised by the apex Court in the decision reported in **Hari Kishan & State of Hariana v. Sukhbir Singh (**AIR 1988 SC 2127). Hence, I propose to alter the sentence imposed on the revision petitioner. The sentence imposed on the revision petitioner is set aside and instead he is directed to pay the

cheque amount of Rs.96,000/- (Rupees Ninety six thousand) to the defacto complainant(PW1-Gopinathan) by way of compensation under Section 357(3) Cr.P.C within five months from today failing which he shall undergo simple imprisonment for three months by way of default sentence. Besides the compensation, the revision petitioner shall also undergo imprisonment till rising of the court on a day to be fixed by the trial court.

In the result the revision petition is disposed of confirming the conviction entered and modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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